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A convention (sometimes called a covenant) is a binding treaty, coming into force upon ratification by a certain number of States. Article 26 of the Vienna Convention on the Law of Treaties provides that: **‘Every treaty in force is binding upon the parties to it and must be performed by them in good faith’.**

*A declaration is **not legally binding but carries moral weight** because it is adopted by the international community.*

**Domestic law should be cognisant of these conventions and declarations, when passing Parliamentary laws, thus ensuring that human rights violations are eliminated.**

**Regrettably, The Department of Immigration does not appear to adopt anything in ‘good faith’.**

Universal Declaration of Human Rights (UDHR)

In 1948 the United Nations General Assembly adopted the UDHR. This was the first time that countries agreed on a comprehensive statement of inalienable human rights. The UDHR is not a treaty, so it does not directly create legal obligations for States. The Declaration has however, had a profound influence on the development of international human rights law. It is argued that because States have constantly invoked the Declaration over more than 50 years, **it has become binding as a part of customary international law.**

Most of these rights are not absolute. Instead they are subject to **reasonable** limitations which are created for a legitimate purpose. For example, it may be legitimate to limit a right in order to protect national security, public order or the general welfare of a democratic society.

**Evidently, s501 is being used as a form of disguised deportation, to ‘ramp up’ the number of ‘criminals’ removed from Australia, as opined by the Minister during a radio interview with Ray Bradley, regardless of how many human rights issues, such as displacement or civil rights violations, such as access to legal resources and web sites are contravened.**

### **Personal Bias shown by the Minister**

In a radio interview with Mr Ray Hadley on the 21/04/2016, (*Zaburoni v The Minister*) the Minister said, “Well Ray, firstly it’s a good thing that these people have gone. Our community is a safer place for not having these criminals walking around amongst us. So the work we’re doing in cancelling visas of people who are here as non-citizens, they commit crimes and our numbers are up by hundreds of per cent over the last 12 months. I’m really proud that we’ve been able to kick out some pretty serious criminals, who I think would have reoffended. The Minister then goes on to boast about being the most litigated person in the Commonwealth, which brings up the problematic issue of ‘reckless spending’ of taxpayers money and ties up the courts with cases that are subject only to judicial review, which in turn is heavily loaded in favour of the Minister.

Later in the interview, the Minister again boasts about cancelling over 1100 visas in the last 12 months, “...so a pretty significant number and again I want to ramp up that number over the next year.” (my observation – goes to the revocation process which then becomes farcical as the Minister, and by extension, his delegates are merely paying lip service to this process and also implies that regardless of any countervailing considerations, the character test becomes the only criterion by which a submission or appeal will be adjudged, thereby the number of visas cancelled

will be 'ramped up' with little or no regard to the application of the statutory powers visited upon him, by Parliament.) He also goes on to say that, "We've been able to make our society a safer place..." **This is not borne out by crime statistics: according to the Bureau of Statistics, released on 08/02/2017 for recorded crime offences during 2015 –2016, offender numbers increased in almost all states and territories, from previous years, 2014 – 2015.**

**The majority of these offences were drug related, committed by serial offenders.** [REDACTED]

An Australian Institute of Criminology (13/05/2017) study into reducing recidivism through vocational education and training examined the impact of education on reoffending behaviour. It observed that the chances of an offender returning to prison after two years, was 32% for non-participants, compared to only 23% for participants. It concluded that reoffending behaviour is more prevalent due to **drug related offences**, as opposed to any other type of offence.

What these statistics do not and cannot establish is the assertion by the Minister that our communities are safer because 'these people' had their visas cancelled. It is virtually impossible to acquire statistics of recidivism by people who have been 'kicked out' of Australia to far flung corners of the globe. What the Minister postulates by proclaiming that he **"thinks they would reoffend"** **cannot possibly be determined.**

J Kirby, (Jia v Minister) observed that a Minister is not at **liberty to apply blindly his own**, departmental, a party or government policy which is inconsistent with the assumptions of individual justice and administrative decision making that are inherent in the grant of power by the Parliament.

Some rights, such as the right not to be held in slavery and the right to be free from **torture are absolute**. Article 4 of the ICCPR identifies absolute rights which cannot be **infringed in any circumstances**. Detaining and deporting an individual who has strong family ties is akin to psychological torture, it is akin to exile. Where psychological illness is pre-existing, this further, exacerbates the mental torture experienced by removing an individual from all that he/she holds dear; away from family support and social support is tantamount to a death sentence on an already fragile mind.

Australia agreed to be bound by the ICCPR on 13 August 1980, subject to certain reservations. **Article 2(2) of the ICCPR requires Australia to take all necessary legislative and other measures to give effect to the rights in the Convention.**

**Detainees are not just criteria by which a decision is reached by a set of guidelines, they are human beings, not a tick or a cross to fill a box. The s501(3A) process dehumanises people and decimates families.**

**In Conclusion: The visa cancellation process is flawed and should be seriously reviewed**

- Every application is unique and should be treated as such. Each application should be viewed on its own merits and not just given "lip-service" because the Immigration Department has a standard "procedural manual" which guides a decision.
- All applicants are deserving of a merits review. By disallowing a merits review if a decision is made by the Minister or an Assistant Minister, is a blatant miscarriage of the notion of

natural justice and procedural fairness. This, in the Australian sense must also embrace requirements of rationality and logical **probative** evidence.

- All applications for revocation should be of necessity, assessed on the circumstances surrounding the applicant's offence. Not just the sentence imposed or the characterisation of the offence, extenuating and mitigating circumstances which led to the offence must be carefully considered and, subsequent behaviour, whether in custodial care or in the community, should be a huge deliberation.
- The decision-maker should diligently consider the amount of time the individual has spent in Australia and the strength of the ties that bind. The impact this will have on the individual as well as the far-reaching consequences to the family who have the legal right to remain in Australia. Is the family merely considered "collateral damage" once a decision to deport is made?
- The health and well-being of the detainee/deportee, including the well-being of the remaining family members should be of paramount importance in deducing the outcome of an application.
- Evidence provided by authoritative and independent sources should be granted extensive weight in the context of "reasons why the visa cancellation should be revoked." Especially when offered by a Government Body, like the Parole Board who exercise their statutory functions under the Corrective Services Act.
- Consistency when weighing various factors. The director of the National Character Consideration Centre, (NCCC) in a letter to a detainee on Christmas Island, stated in no uncertain terms in paragraph 4 "A range of factors are weighed up when considering a revocation request, including the seriousness and **nature of the criminal** activity or history, **conduct in prison, likelihood of reoffending** and **any rehabilitation** undertaken..."
- Each revocation request should be considered objectively, without Ministerial bias. People are not mere statistics and a pre-ordained pattern of assessment should be discontinued. Consequently, to be labelled as "these people", is offensive and derogatory.
- The revocation process should be started approximately a year before the release of a prisoner. At least the individual will know, before his/her release, the outcome of his/her revocation request. This will save on the frivolous use of tax-payers money (transport costs, wages of accompanying officers, the cost of detention) when people are transferred to the various detention centres by two or more officers at any given time.

I understand that there are instances when deportation under s501 is required, even a necessity, however, when people have significant ties to the community this becomes a last resort and, that is as should be, **a last resort** not an **automatic disqualification** in the **first instance**.

Your careful consideration of this submission is of utmost importance to people who have been affected by this Draconian measure. The life-long effect deportation has on the individual and his family is unbearable and unconscionable. All lives matter!

I thank you for your time in deliberating the magnitude of the visa cancellation process and trust that the effect it has on family members plays a significant role in your discussions. Governmental obligation to families should not only occur during the electioneering time but should be constant and far-reaching. People are not just voting numbers to be plied with promises that are instantly forgotten once a party is elected to govern.

Populist rhetoric by politicians, to sway the vote, (such as 'stopping the boats') may have garnered extra votes, however one wonders if the public understands the far-reaching consequences this

action has had on the lives of countless people. Yes, people smugglers had to be stopped, but at what cost? The Minister of Immigration has some popular support with his hard-line stance regarding s501(3A), again, at what cost?

Yours sincerely

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